promise in the agreement becomes illegal. Clause 5 is therefore not severable from the illegal consideration.

The appeal is allowed. The claim and counterclaim are dismissed. The appellants will have half the costs of this appeal.

There will be no order as to costs in the court below.

Azmi L.P.: I agree that the appeal be allowed for reasons given by the Honourable the Chief Justice of Borneo. The claim and counterclaim are dismissed. The appellants will have half the costs of this appeal.

There will be no order as to costs in the court below.

Yong J.: I have had the advantage of reading the judgment of the learned Chief Justice of Borneo and agree to the orders proposed by him for reasons as stated therein. I have nothing to add.

Appeal allowed

MAZNAH v. ABDUL AZIZ

[R.C.J. (Harun J.) June 24, 1971]

[Kuala Lumpur — Maintenance Case No. 10 of 1954]

Family Law — Maintenance — Parties Muslims resident in Selangor — Order made under the Married Women and Children (Maintenance) Ordinance, 1950 — Administration of Muslim Law Enactment (Selangor), 1952.

The applicant had obtained a maintenance order against her former husband, the respondent, under section 3 of the Married Women and Children (Maintenance) Ordinance, 1950. He subsequently moved to Singapore and the order was registered in Singapore. The respondent then moved to Kuala Lumpur and the applicant applied to the magistrate for the enforcement of the order. The learned magistrate referred the matter to the High Court as to the legality of the maintenance order.

Held: as it had been provided by the Selangor Administration of Muslim Law Enactment, 1952 that the Married Women and Children (Maintenance) Ordinance, shall not apply in the case of any claim for maintenance made by a Muslim against a Muslim, the magistrate had no jurisdiction to make the maintenance order in this case and the order must therefore be revoked.

REVISION.

Harun J.: The learned magistrate, Kuala Lumpur has referred this case for revision.

The facts are as follows:

On the application of Maznah binti Haji Mohamed Ali (applicant) of Kuala Lumpur against her former husband Abdul Aziz bin Abdullah (respondent) of Kuala Lumpur, the magistrate Kuala Lumpur on 26th February 1954 issued a maintenance order under section 3 of the Married Women and Children (Maintenance) Ordinance 1950 in the sum of $90 per mensem commencing from 2nd day of February, 1954 for the maintenance of their three children and also for the maintenance of the applicant until such time she gives birth to the fourth child. On 30th April, 1954 on the application of the respondent, the magistrate, Kuala Lumpur varied the order by reducing the amount to $70 per mensem commencing from 2nd May, 1954.

The respondent then moved to Singapore and the said maintenance order was registered in the First District Court at Singapore under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. The Singapore courts subsequently varied the order by reducing the amount to $40 per mensen with effect from 2nd August, 1957. The respondent then moved to Kuala Lumpur and the applicant made an application to the magistrate, Kuala Lumpur in May 1971 for —

(a) an attachment of earnings order; and

(b) recovery of arrears of the monthly sums ordered to be paid by the Kuala Lumpur and Singapore courts.

On 22nd May 1971, the learned magistrate, Kuala Lumpur granted her application and issued an order under section 4(1) of the Married Women and Children (Enforcement of Maintenance) Act 1968 on the respondent's employer.

It is as to the legality of this last order that the learned magistrate has referred to this court.

Both the applicant and the respondent are Muslims resident in Kuala Lumpur at the time of the 1954 application for maintenance. Section 13 of the Married Women and Children (Maintenance) Ordinance 1950 gives power to the Selangor State Legislature to exempt cases between persons professing the Muslim religion from the provisions of the Ordinance. The Selangor Legislature exercised this power in section 138 of the Administration of Muslim Law Enactment, 1952 (Selangor) by providing that "the Married Women and Children (Maintenance) Ordinance 1950 shall not apply in the State of Selangor in the case of any claim for maintenance made by a Muslim against a Muslim."

The magistrate, Kuala Lumpur therefore had no jurisdiction to make the order of 26th February, 1954 and consequently all orders made subsequently including that made on 22nd May 1971 are of no effect. This does not mean that the magistrate's court at Kuala Lumpur has no jurisdiction to make attachment of earnings orders in respect of Muslims. Since 19th of July 1968 by the Married Women and Children (Enforcement of Maintenance) (Application to Selangor) Enactment 1968, the Married Women and Children (Enforcement of Maintenance) Act, 1968 now applies in respect of Muslims. But the applicant must first obtain a maintenance order from a Shariah court under the provisions of the Selangor Administration of Muslim Law Ordinance 1952.

For these reasons, I revoke the orders made by the learned magistrate on 26th day of February 1954 and 22nd May, 1971.

Magistrate's order revoked.